

# **GUIDELINES FOR ADMINISTRATIVE INSPECTIONS**

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**Enforcement Response Memo link**

## **I. PURPOSE**

The purpose of these guidelines is to describe the professional standards and general procedures for administrative inspections undertaken by DEM. In particular, these guidelines were written to remind all staff that it is critical to respect private property interests while conducting field activities, in particular environmental inspections. Specifically, these guidelines:

- (1) explain expectations of privacy recognized and protected by law;
- (2) explain the reasons for and degree of urgency associated with different types of inspections;
- (3) explain how inspections of private property must be conducted so as to respect the rights and legitimate privacy expectations of the owners and occupants; and
- (4) promote public awareness of our programs and the reasons for the inspections.

## **II. APPLICABILITY**

These guidelines are effective immediately and are for the use of DEM personnel in conducting administrative inspections taken under the authority of the environmental statutes and regulations that DEM administers. These guidelines apply to all inspections and field activities carried out by DEM personnel after the effective date.

DEM reserves the right to change these guidelines as appropriate, or to act at variance to these guidelines for the public good as the need arises. These guidelines do not create any rights, duties or obligations implied or otherwise in any third parties. These guidelines are not to be interpreted as changing existing laws and regulations and do not limit or expand DEM's existing legal authority to conduct regulatory inspections. They are not intended to limit or expand the rights or privacy expectations of property owners. These guidelines do not address, or propose to change, requirements for inspections to be subject to a criminal search warrant.

### **III. POLICY**

The Department of Environmental Management is charged by law to protect, preserve and restore Rhode Island's natural resources and environment through a wide variety of regulatory programs. This responsibility must be carried out in the spirit of public service, which means, first, that the Department's interactions with members of the public, including regulated persons and entities, should at all times demonstrate courtesy, respect and responsiveness to the greatest degree possible, and minimize unnecessary confrontation. Second, to the extent the law authorizes the Department to conduct inspections on private property, such inspections should be conducted with due respect for the rights and privacy expectations of property owners, consistent with the protections afforded by the Constitution and the courts.

The inspection is the primary compliance assurance method available to DEM for determining compliance with environmental statutes and regulations that DEM administers. As such, the issue has been raised whether inspections should be announced to the party in advance of the actual visit and whether permission should be sought prior to conducting said inspections. The Department has evaluated this issue carefully and has determined that its programs should continue to have unannounced inspections available as a compliance assurance tool. The use of this inspection type has value in obtaining data that are more representative of normal operating conditions and can encourage continuous compliance. The Department realizes, however, that some parties feel that such inspections interfere with their rights as property owners and operators of various business activities. To address these concerns, the Department will increase its efforts to promote public awareness of its programs and of the public purposes for its inspections; at the time of inspection, explain the reasons for such inspection; and conduct the inspection within the scope of the environmental program(s) of which it is part.

In the event that a DEM inspector or field staff member is refused access and state law authorizes the type and scope of the inspection attempted by that inspector, DEM will pursue the matter through all legal avenues and remedies available to the Department to obtain access and complete the inspection in a timely manner. Once the program supervisor or Division Chief is notified by staff in the field that they have been denied access, they will contact the Office of Legal Services to initiate legal communications, either directly with the party responsible for denying the staff member access or its legal counsel, to try to resolve the issue. In some programs, denying access for inspections is a criminal offense. In situations involving those programs, the program supervisor or Division Chief may advise the Office of Criminal Investigation on the situation for potential assistance.

In general, criminal violations of environmental laws involve severe deviations from the requirements and serious risk to human health and the environment. Deliberate acts of non-compliance, repeated instances of gross non-compliance, deliberate concealment or falsification of information, and gross non-compliance with permit or license requirements will be consistently and aggressively pursued to the greatest extent allowed under law. If criminal conduct is suspected prior to initiating an inspection, the program supervisor and/or Division Chief should be notified immediately. An inspection with the intent to gather evidence of criminal activity may not be conducted without a criminal search warrant. If the inspector develops suspicion of criminal conduct during the course of the inspection, the investigator

should complete the inspection and immediately notify the program supervisor and/or Division Chief. It will be up to the Office of Criminal Investigation in coordination with the Attorney General's Office to actually determine if a criminal violation of the law has taken place.

#### **IV. PROFESSIONAL STANDARDS**

- Treat all members of the public with respect at all times, without regard to provocation to act otherwise;
- Treat all property with respect and courtesy at all times;
- Avoid entering private property (including driveways) for any reason other than to determine and/or enforce compliance with Department regulations or conditions of a permit, license or other approval, either issued or proposed;
- Do not conduct an inspection with the intent to gather evidence of criminal activity without a criminal search warrant, except to the extent specifically allowed by law;
- Do not conduct an inspection of private property without making a good faith effort to notify the owner or a contractor or consultant whom you reasonably believe represents the property owner;
- Identify yourself by name, title and program when you contact the property owner or other persons at the property under investigation and explain the purpose and scope of your inspection;
- Carry visible identification (official photo ID issued by the Department) throughout the inspection;
- Conduct inspections in a polite, respectful manner. Take care to limit yourself to the area and scope of activity covered by the relevant statute, regulation, or permit;
- If refused access and state law authorizes an inspection, politely explain so. If unsuccessful in gaining access, collect as much information as possible at the site, being careful to document all visible conditions pertaining to the reason for the inspection, and obtain the name of the person who denied the inspector access and under what circumstances. If two inspectors are present, one should remain on the site in a publicly accessible area while the other contacts the office for further instructions, leaving the site if necessary. If only one inspector is present, the inspector should immediately contact the office for further instructions, leaving the site if necessary. If any situation exists on-site that an inspector considers threatening, all inspectors should leave the site and immediately contact the office. You may not conduct an inspection inside a home or yard immediately adjacent to the living areas in a residence without permission from the owner, his or her agent, or a tenant in control of the property. In these limited situations (inspection inside a home or yard immediately adjacent to the living areas in a residence), if the owner, agent or tenant requests or orders you to leave, try to arrange for an inspection at a later date, but leave the property. Contact your supervisor for further instructions (for example, whether to seek a criminal search warrant or court order).
- Before you leave the property, leave a calling card identifying yourself and, when possible, explaining the purpose and scope of the inspection. If you cannot explain the preliminary findings of the inspection on-site, leave appropriate directions for the property owner to arrange a follow-up conversation.

## **V. REASONS FOR NEEDING ACCESS TO PRIVATE PROPERTY**

Apart from criminal investigations and inspections by commissioned law enforcement officers, inspections by the Department can be categorized as follows:

Responding to an Emergency: there is evidence, from a credible complaint or otherwise, of a real or potential *imminent and serious threat to the environment or public health* so as to warrant investigation, remediation or other immediate response by the Department. Examples include response to complaints of significant odors, oil spills, or chemical emergencies.

Determining or Enforcing Compliance: a structure or activity on the property is subject to regulation by the Department, through a permit or license or otherwise, and the Department, in response to a legitimate complaint or in the course of a regular compliance inspection program, needs to ensure compliance, but such need is not of an emergency nature. This includes activities for which the Department has issued a permit or license (for example, discharges, emissions, waste disposal, wetland alteration) or which require a permit or license (including hunting and fishing), as well as activities for which no individual permit is required but which are subject to Department regulations (for example, management of hazardous wastes).

Other Field Activities: field investigations, including sampling, monitoring and surveying for reasons other than responding to an emergency or ensuring compliance with regulatory requirements. Examples include regional assessments of hazardous contamination, water quality assessments, restoration projects, pollution prevention projects, and educational activities.

## **VI. GUIDELINES**

### **A. General Guidelines for All Inspections and Response Actions:**

These general guidelines apply to all inspections and investigations and must be followed with any additional guidelines outlined in the subsequent sections covering specific types of properties and inspections.

- The inspector should prepare for every inspection prior to entering the site by determining the scope and objectives of an inspection; coordinating inspection activities with other regulatory or enforcement personnel as necessary; developing a thorough understanding of the technical, regulatory, and enforcement aspects of the site or facility; developing a plan or strategy for conducting an inspection consistent with inspection objectives; and determining health and safety requirements and equipment needs for the inspection.
- When in the field, you should make a reasonable effort to locate the owner or operator in control of any property to identify yourself and explain the purpose and scope of the inspection in accordance with the Professional Standards. Reasonable efforts to locate the owner are efforts undertaken at the site, including knocking on doors of nearby structures and/or approaching workers on or around a site, and do not include researching property ownership or control solely for the purposes of undertaking an inspection or investigation.

- When sampling is undertaken as part of an inspection, the inspector should offer written receipt for samples collected; provide duplicate samples if requested; and furnish owners, operators, or agents copies of any sample analyses once they are received.
- If the owner or operator refuses access, explain politely that state law allows for immediate inspection of the property. If the property owner or operator still requests or orders you to leave, collect as much information as possible at the site (unless this is a non-emergency inspections inside a home or immediately next to a living area-see C below), being careful to document all visible conditions pertaining to the reason for the inspection, and to identify the person who denied the inspector access and under what circumstances. If two inspectors are present, one should remain on the site in a publicly accessible area while the other contacts the office for further instructions, leaving the site if necessary. If only one inspector is present, the inspector should immediately contact the office for further instructions, leaving the site if necessary. If any situation exists on-site that an inspector considers threatening, all inspectors should leave the site and immediately contact the office.
- If access is denied you may make observations from adjacent public ways or abutting private property, with permission from the owner of such property and without trespassing onto the property to be inspected.
- On occasion, the owner or operator may try to impose conditions on the nature and extent of the proposed inspection. In the past, inspectors have been asked to sign liability waivers and other legal documents as a condition of inspection. The inspector or investigator should not sign any such documents and, if access is still refused, should proceed in accordance with these guidelines as if access was refused initially. If the owner or operator proposes any other condition on the inspection, notify your program supervisor or Division Chief. The Department's policy is to reasonably try to accommodate such requests on the condition that it in no way jeopardizes the quality of the inspection or affects the results.
- Except for non-emergency inspections inside a home or immediately next to the living area of residential property, if the owner or operator is not present, proceed with the inspection to the extent possible.
- Upon completion of the inspection and, if possible, prior to leaving the premises, advise the owner or operator of your preliminary findings and likely follow-up actions, make recommendations towards the correction of any violation or environmental hazard identified, and/or direct him or her to compliance assistance or permitting offices, as appropriate.

**B. Responding to Allegations or Evidence of Immediate and Serious Environmental Problems:**

- You may inspect facilities and activities without prior notification and without permission from the owner or operator in control of the property, when there is reason to believe that an *imminent and serious threat* to human health or the environment exists on the property.
- In determining whether Immediate and Serious Environmental Problems exist, inspectors should consider: (1) the degree of urgency involved, (2) the amount of time necessary to

contact the office and/or obtain a criminal search warrant, (3) whether the evidence is about to be removed or destroyed, (4) the possibility of danger at the site, (5) information indicating the persons responsible for the alleged violation know the Department is aware of their activities, and (6) the ready destructibility of the evidence.

- If the owner or operator refuses access, explain politely that state law (identify the specific statute or regulation) authorizes immediate inspection of the property to carry out the Department's responsibilities. If the property owner or operator still requests or orders you to leave, quickly collect as much information as possible at the site, being careful to document all visible conditions pertaining to the reason for the inspection, and identify the person who denied the inspector access and under what circumstances. If you believe the allegation of the immediate and serious environmental problem is an emergency, contact fire and/or police authorities for their assistance in stabilizing the situation.

#### **C. Non-Emergency Inspections Inside a Home or Immediately Next to the Living Area of Residential Property**

- You may not conduct an inspection inside a home or yard immediately adjacent to the living areas in a residence without prior notification unless you have obtained permission from the owner, his or her agent, or a tenant in control of the property. Inspections should typically be conducted during the Department's normal business hours unless specific circumstances warrant after-hours investigation.
- When seeking permission for an inspection, identify yourself and explain the purpose and scope of the inspection in accordance with the Professional Standards.
- If the owner, agent or tenant refuses access, and if state law (for example, relating to ISDS regulation), authorizes inspection of the property, explain so politely. If the owner, agent or tenant still requests or orders you to leave, try to arrange for an inspection at a later date, but leave the property. Contact your supervisor for further instructions (for example, whether to seek a criminal search warrant or court order).

#### **D. Non-Emergency Inspections of Closely Regulated Businesses**

- You may inspect facilities and activities for which a permit or license from the Department has been issued or is required, without prior notification and without prior permission from the owner or operator in control of the property, but should limit the scope of the inspection to those areas and activities that are covered by environmental regulations.

#### **E. Non-Emergency Inspections of Businesses That Are Not Closely Regulated**

- You may inspect facilities and activities that do not require a permit or license from the Department if: (1) you are responding to an emergency (see above), or (2) you are responding to a credible complaint or evidence of an ongoing violation of the Environmental laws and regulations enforced by the Department. Inspections should be conducted during the Department's business hours unless specific circumstances warrant after-hours investigation.

- If the owner or operator is not present, proceed with the inspection to the extent possible. You may need to return to the site to complete the inspection when the owner is present, but as much information should be collected at the first visit as possible. An example for a need for follow-up would be to examine operating records in the custody of the owner. You may also proceed with the inspection if you have provided prior notice of the time of your inspection and the owner or operator has not objected.

#### **F. Non-Emergency Inspections of Open Fields**

- You may inspect or investigate an open, wooded or undeveloped area without notification or permission when there is no obvious way to quickly determine ownership or control of the property in the field. You may inspect an open field, or conduct an investigation or inspection from an open field if: (1) you are responding to an emergency (see above), or (2) you are responding to a credible complaint or evidence of an ongoing violation of the Environmental laws and regulations enforced by the Department either on the open field property or on an immediately adjacent property.
- If the owner or operator is not present to provide permission, proceed with the inspection to the extent possible, but only in the “open field” area and only if you are responding to a credible complaint or physical evidence of an ongoing violation, such as noise, odors, visible disturbance, etc.